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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

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| SAM KVITKO et al.,<br>Plaintiffs and Respondents,<br>v.<br>29 SW, LLC,<br>Defendant and Appellant. | A153696<br><br>(Contra Costa County<br>Super. Ct. No. MSC1600143) |

The sellers of a residence located in Lafayette, California, respondents Sam Kvitko and Galina Kvitko, brought suit to recover a $200,000 purchase deposit being held in trust after the prospective buyer backed out of the transaction. The prospective buyer, appellant 29 SW, LLC (hereafter, "buyer"), now appeals a judgment entered pursuant to Code of Civil Procedure section 664.6 summarily enforcing an oral settlement agreement the parties reached at a June 26, 2017 mandatory settlement conference whose terms were recited to the court (apparently, without a court reporter present).

We affirm.

## BACKGROUND

The appellate record consists of the register of actions, most—but not all—of the papers filed in connection with the seller's motion to enforce the settlement agreement, and a 146-page reporter's transcript of the contested hearing on November 20, 2017, at which two witnesses testified and numerous exhibits were admitted, that culminated with entry of the December 22, 2017 judgment now challenged on appeal. The appellant's written opposition to the section 664.6 motion is not in the clerk's transcript, nor are any

of the exhibits admitted into evidence at the contested hearing (see Cal. Rules of Court, rule 8.122(b)(3)(B) [permitting their inclusion in a clerk's transcript].)

It is unnecessary to summarize the facts and indeed, as discussed below, we are somewhat constrained in our ability to do so. We presume the parties' familiarity with the factual and procedural background as recited in the briefs. The court entered a judgment directing the appellant to buy the residence from respondents on certain terms, and this appeal followed.

**DISCUSSION**

The buyer's opening brief presents two broad attacks on the trial court's ruling enforcing the oral settlement agreement, one factual and the other ostensibly legal. As stated in the buyer's summary of argument on page 5: "It is the position of the Appellant and the record of the trial court that the enforcement of the alleged settlement agreement was not supported by substantial evidence, as material terms necessary to create an enforceable agreement were never agreed to by both parties and were instead implied through the trial court's own determination. [¶] However, even with the implication of these additional terms, multiple material terms necessary to effectuate a valid settlement remain uncertain and undetermined. . . . As a result, it was an error of the trial court to grant the Respondent's Motion To Enforce as material terms necessary to effectuate a settlement were missing and there was a clear misunderstanding by all involved parties as to what the actual terms of the agreement were."

The buyer's first proposition, that the judgment is not supported by substantial evidence, consists of eight pages of argument captioned under three subheadings. We are unable to consider these arguments, however, because the buyer has not summarized any of the relevant evidence. Although at various junctures its briefing discusses some of the evidence introduced in connection with the written motion papers, many of those references lack citations to the appellate record which is improper,[1] and we cannot tell

[1] " 'It is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations.' [Citations.] If a party fails to support an argument with the necessary citations to the record, . . . the

whether even that discussion is a fair and balanced summary of all of the written evidence. But most critically, appellant has not even attempted to summarize any of the evidence *introduced at the contested hearing*. Challenges to the sufficiency of the evidence are forfeited if an appellant does not summarize (and do so fairly) all of the material evidence. If an appellant does not do this, we " 'presume that the record contains evidence to sustain every finding of fact.' " (*Togio v. Town of Ross* (1998) 70 Cal.App.4th 309, 317; see also, e.g., *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 677.) This basic principle of appellate practice is fatal to buyer's challenge to the court's factual findings.

Turning to what is ostensibly a legal question, appellant argues that the court's judgment "fail[s] to provide all material terms required to effectuate a valid settlement agreement," and instead imposes terms that are contradictory and "vague and uncertain."[2] What follows, though, is another attack on the evidence. Rather than discuss *the court's judgment* and explain in what respects it is legally deficient, the buyer again re-argues the facts (improperly, without any citation to the record), and concludes that the court erred in entering judgment on the settlement agreement because there was no "mutual understanding or consent as to which party would purchase the Property" which it says was a "missing material term." "As the parties to this action were unable to reach a mutual understanding of the material terms necessary to effectuate a settlement agreement, including who would be responsible for the purchasing [of] the Property and what documents would be necessary to finalize the sale," it says, "no valid contract exists." But the court's judgment directs the *buyer* to purchase the home; that material term is not missing from the agreement enforced. As just explained, buyer has forfeited

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argument [may be] deemed to have been waived." (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856; accord, *Jumaane v. City of Los Angeles* (2015) 241 Cal.App.4th 1390, 1406 ["The court is not required to make an independent search of the record and may disregard any claims when no reference is furnished"].)

[2] It is not clear whether these issues were even raised below because the record does not contain the appellant's written opposition to the motion.

any challenge to the court's *factual* finding that this is what the parties agreed to and so we are unable to perceive any legal error as a result. Accordingly, the buyer has demonstrated no error in the court's ruling. We also note that any factual challenge on this basis would face formidable obstacles: the buyer's version of a written draft settlement agreement says the same thing (at paragraph 2: "29 SW agrees to purchase the Kvitkos' residence . . . for $2.9 million").

We pause, finally, to comment on some of buyer's more specific claims that the court imposed some terms that are inconsistent, confusing or contradictory. One is the court's decision to award prevailing party attorney's fees to the seller; buyer says neither party ever even proposed such a term much less did they agree to that. The other is a requirement in the judgment that an open house take place before the sale closes, a requirement buyer says is at odds with the very concept of a sale to appellant. We are not persuaded by either point. Leaving aside the forfeiture resulting from buyer's failure to summarize all the evidence, even a cursory review of some of the evidence submitted by respondent with its motion papers shows that both parties contemplated settlement terms along these lines. After the oral settlement had been reached, the very first draft of a written agreement prepared by the *seller's* lawyer contained both a prevailing party attorney's fee provision *and* a provision stating "29 SW may hold one open house on July 15, 2017." A revised draft with which the *buyer's* lawyer then countered (on July 20, 2017) contained similar terms, allowing for an open house and an award of prevailing party attorney's fees. These terms did not come out of nowhere. They came from the documents themselves.

## DISPOSITION

The judgment is affirmed. Respondents shall recover their costs.

STEWART, J.

We concur.

RICHMAN, Acting P. J.

MILLER, J.

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